

BOARD OF LICENSURE OF FORESTERS
MINUTES OF BOARD MEETING
FEBRUARY 9, 2005

BOARD: Board of Licensure of Foresters

DATE: February 9, 2005

ROOM: Kennebec Room

LOCATION: Department of Professional & Financial Regulation

TIME

SCHEDULED: 8:30 A.M.

TIME CALLED

TO ORDER: 8:50 A.M.

ADJOURN: 7:50 P.M.

CHAIR: William Ostrofsky

VICE-CHAIR: Sumner A. Jones, Jr.

BOARD CLERK: Susan Greenlaw

MEMBERS PRESENT: William Ostrofsky, Stephen Holt, Hon. Sumner A. Jones Jr., Rene Noel Jr., Carol Redelsheimer

MEMBERS ABSENT:

OTHERS PRESENT: Deborah Fales, Board Clerk; Carol Leighton, Administrator; Robert Perkins, Assistant Attorney General

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CALL TO ORDER

The meeting was called to order at 8:50 a.m.

AGENDA MODIFICATIONS

OLD BUSINESS

NEW BUSINESS

Hearing – Eugene Putnam (Complaint #FOR-039)

The Chair opened the hearing in the matter of Eugene L. Putnam. Mr. Putnam was present and not represented by an attorney. Assistant Attorney General Robert Perkins represented the State in this matter. James Smith was present as Hearing Officer and Counsel for the Board. Public deliberations were conducted at the close of the hearing.

A motion was made by William Ostrofsky to find the licensee in violation of Board Rules Chapter 100 Section 3(6) by not sufficiently offering to provide a written confirmation of the duties to be performed and the fees charged for the logging plan; seconded by Stephen Holt. Holt, Noel, and Ostrofsky voted in the affirmative; Jones opposed; Redelsheimer abstained. Motion carried.

A motion was made by Stephen Holt to find the licensee in violation of Board Rules Chapter 100 Section 3(4) by not developing a forest management plan and logging plan; seconded by William Ostrofsky. Holt, Noel, and Ostrofsky voted in the affirmative; Jones opposed; Redelsheimer abstained. Motion carried.

A motion was made by William Ostrofsky to find the licensee in violation of Board Rules, Chapter 100, Section 3(8) by failing to exercise due care in completing the Forest Operation Notification form before it was submitted to the Maine Forest Service; seconded by Sumner Jones. Holt, Jones, Noel, and Ostrofsky voted in the affirmative; none opposed; Redelsheimer abstained. Motion carried.

A motion was made by Stephen Holt to find the licensee in violation of Board Rules Chapter 100 Section 3(8) by failing to exercise due care by neglecting to obtain a predetermination of independent contractor status and to include the appropriate language in the contract between the landowner and the logger to adequately protect the landowner from workers' compensation liabilities; seconded by Rene Noel. Holt, Noel, and Ostrofsky voted in the affirmative; Jones opposed; Redelsheimer abstained. Motion carried.

A motion was made by Stephen Holt to find the licensee in violation of Section 3(1) and (8) by failing to exercise due care in promptly investigating the logger's delay in paying for the wood harvested from the landowner's land and in failing to promptly notify her of the non-payment by the logger; seconded by William Ostrofsky. Holt, Noel, and Ostrofsky voted in the affirmative; Jones opposed; Redelsheimer abstained. Motion carried.

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A motion was made by Stephen Holt to find the licensee in violation of Board Rules Chapter 100 Section 3(10) and (11) by offering to file and pursue a small claims action on behalf of the landowner in violation of 4 M.R.S.A. §807(3)(C) and Rule 16 of the Maine Rules of Small Claims Procedure, rather than advising her that she would have to do this herself or by having an attorney represent her; seconded by William Ostrofsky. Holt voted in the affirmative; Jones, Noel, and Ostrofsky opposed; Redelsheimer abstained. Motion failed.

A motion was made by Rene Noel to find no violation of Board Rules Chapter 100 Section 3(1) by making threats against the landowner and the landowner's property; seconded by Sumner Jones. Holt, Jones, Noel, and Ostrofsky voted in the affirmative; none opposed; Redelsheimer abstained. Motion carried.

A motion was made by Rene Noel to find no violation of Board Rules Chapter 100 section 3(1) when negotiating the purchase of firewood from the landowner at the time he was providing forestry services, including advise as to the value of the wood; seconded by Sumner Jones. Holt, Jones, and Noel voted in the affirmative; Ostrofsky opposed; Redelsheimer abstained. Motion carried.

A motion was made by Rene Noel to find no violation of Board Rules Chapter 100 Section 3(8) by failing to exercise due care in calculating the amount owed to the landowner by the logger based on the scale slips in his possession; seconded by Stephen Holt. Holt, Jones, Noel, and Ostrofsky voted in the affirmative; none opposed; Redelsheimer abstained. Motion carried.

A motion was made by Rene Noel to find the license in violation of Board Rules Chapter 100 Section 3(8) by failing to exercise due care in investigating the reliability and integrity of the logger he was proposing that the landowner hire and in failing to have the contract with the logger contain protections for the landowner such as pre-paid stumpage or a deposit to protect against non-payment by the logger; seconded by William Ostrofsky. Holt, Noel, and Ostrofsky voted in the affirmative; Jones opposed; Redelsheimer abstained. Motion carried.

A motion was made by William Ostrofsky to order the revocation of the licensee's license; seconded by Stephen Holt. Holt, and Ostrofsky voted in the affirmative; Jones and Noel opposed; Redelsheimer abstained. Motion failed.

A motion was made by Rene Noel to order the following: (1) Reprimand; (2) license suspension for a period of one year from the date of this decision; (3) prior to the reinstatement of license, the licensee shall successfully pass the Forester examination; and (4) licensee shall pay costs of this hearing in an amount not to exceed \$2000 to be paid within one year of this decision; (5) licensee shall be placed on probation for a period of five years, during such time the license shall provide the Board's Complaint Officer with written estimates and written contract agreements for all forestry services being offered to all clients, those estimates and agreements shall disclose all terms and conditions relating to the provision of forestry related services including but not limited to the estimated total costs of said services, the total cost to the consumer of all services which shall be listed and priced by category and any and all specific factors upon which the final bill will be based; and in the event that the licensee is requested to perform a dual role as forester and land surveyor, he shall disclose in writing which role he is performing to the client prior to the performance of the service. seconded by William Ostrofsky. Holt, Noel, and Ostrofsky voted in favor; Jones opposed; Redelsheimer abstained. Motion carried.

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A motion was made by Stephen Holt to deny the licensee's request for a Stay of Action; seconded by William Ostrofsky. Holt, Noel, and Ostrofsky voted in the affirmative; Jones opposed; Redelsheimer abstained. Motion carried.

A motion was made by Carol Redelsheimer to waive the continuing education requirement for Andrew J. Pottle pursuant to Public Law 2003, Chapter 140; seconded by William Ostrofsky. Unanimous.

Next Meeting Scheduled for April 27, 2005

OTHER BUSINESS

ADJOURN

Being no further board business to discuss, the meeting was adjourned at 7:50 p.m.

Respectfully submitted,

Susan Greenlaw
Board Clerk